

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2004 MAY 24 P 4:49

PACIFIC PACKAGING
PRODUCTS, INC.,
Plaintiff,

04 11102

U.S. DISTRICT COURT
DISTRICT OF MASS.

v.

Civil Action No.

BALDWIN & CLARKE,
JEFFERSON PILOT SECURITIES CORP.,
BENEFIT STRATEGIES, LLC,
MICHAEL J. KENNEDY, AND
SCOTT D. LAVALLEY

Defendant.

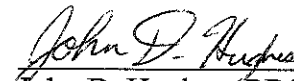
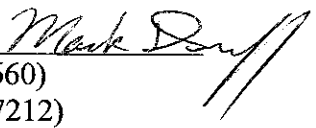
DEFENDANTS' MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Baldwin & Clarke Advisory Services, Inc. ("Baldwin & Clarke"), Jefferson Pilot Securities Corp. ("Jefferson"), Michael J. Kennedy ("Kennedy"), and Scott D. LaValley ("LaValley") hereby move to dismiss Counts I, II, IV, V, VI, VII, IX and X of Plaintiff's Complaint for failure to state a claim on which relief may be granted.

As detailed in a supporting memorandum, Plaintiff Pacific Packaging Products, Inc. ("Pacific Packaging") has brought claims of negligence and indemnification against each of the aforementioned defendants, all of which arise out of a dispute over the management of a 401K Plan (the "Plan") that Pacific Packaging had set up for its employees. Since the Plan meets the definition of an "employee benefit plan" under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001, et seq., ("ERISA"), all of Pacific Packaging's common law claims are preempted by ERISA. Therefore, they should be dismissed.

WHEREFOR, Baldwin & Clarke, Jefferson, Kennedy and LaValley move that Counts I, II, IV, V, VI, VII, IX and X of Plaintiff's Complaint be dismissed with prejudice.

Respectfully Submitted,
BALDWIN & CLARKE,
JEFFERSON PILOT SECURITIES CORP.,
MICHAEL J. KENNEDY, AND
SCOTT D. LAVALLEY,
By their attorneys

 
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(617) 439-4444

May 24, 2004

CERTIFICATE OF SERVICE

I, Mark B. Dubnoff, hereby certify that on this 24th day of May, 2004, I caused a copy of the foregoing document to be sent by first-class mail, postage prepaid, to Plaintiff's counsel, Lora M. McSherry, Esq., Phillips, Gerstein, Holber & Channen, LLP, 25 Kenoza Avenue, Haverhill, MA 01830.


Mark B. Dubnoff